

Attempt to pervert the course of justice and conspire to defeat justice

ss 143 and 135 *Criminal Code*

Prior to 1 January 2014

Transitional Sentencing Provisions: Each of the two tables is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period (after 14/01/09)
- Transitional provisions period (31/08/03 to 14/01/09)
- Pre-transitional provisions period (before 31/08/03)

These periods are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

PCJ	pervert the course of justice
conc	concurrent
cum	cumulative
EFP	eligible for parole
imp	imprisonment
PG	plead guilty
susp	suspended
TES	total effective sentence
methyl	methylamphetamine
MDMA	3,4-Methylenedioxy-n, Alpha Dimethylphenylethylamine (Ecstasy)
wiss	with intent to sell/supply
poss	possess
AOBH	assault occasioning bodily harm
BAC	blood alcohol content

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
22.	<p><i>Kelly v The State of Western Australia</i></p> <p>[2013] WASCA 200</p> <p>Delivered 28/08/2013</p>	<p>25-26 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Criminal record; predominately traffic offences; Convictions for creating false belief and fraud.</p> <p>Long history of cannabis abuse.</p> <p>Committed Ct 8 whilst on bail.</p> <p>The appellant had continued to lie to the Consultant Psychiatrist and PSR Author; Submitted letter to judge containing 'half-truths'.</p>	<p>Ct 1: Fraud. Ct 2: Att to pervert the course of justice. Ct 3: Fraud. Ct 4: Fraud. Ct 5: Fraud. Ct 6: Fraud. Ct 7: Fraud. Ct 8: Att fraud.</p> <p>The appellant created false documents and identification as proof of employment, financial status and identity to obtain finance, motor vehicle loans, insurance and lease agreements.</p> <p>The appellant also appeared as the respondent in the Magistrates Court for the recovery of unpaid rent. The amount claimed was \$3,300. The appellant represented himself using the false details in which he had been granted a lease. The appellant provided altered documentation to the Court showing payments were up to date. He also provided answers to questions that were untrue. As a result the proceedings against him were dismissed.</p>	<p>Ct 1: 1 yr imp (conc). Ct 2: 1 yr 8 mths imp (cum). Ct 3: 8 mths imp (cum). Ct 4: 1 yr imp (conc). Ct 5: 8 mths imp (conc). Ct 6: 1 yr imp (conc). Ct 7: 8 mths imp (conc). Ct 8: 8 mths imp (cum).</p> <p>TES 3 yrs imp.</p> <p>EFP.</p> <p>No remorse or contrition; Limited insight into the gravity of his conduct.</p> <p>Sentencing judge found each count involved an elaborate 'scam' and the 'extent of the forgeries [was] serious, usually involving very important proof of identification, but otherwise proof of employment and so on'.</p> <p>Late concession by the</p>	<p>Dismissed – on papers.</p> <p>At [86] The offence of attempting to pervert the course of justice was serious. The appellant intentionally deceived the magistrate in relation to his true identity. He handed to the magistrate false documents ... The main sentencing factors were appropriate punishment and personal and general deterrence.</p> <p>At [87] The fraud offences committed by the appellant were also serious. They were premeditated, planned and committed over a period of time.... Altering the identification documents involved a degree of sophistication....</p>

				<p>appellant that he was a 'pathological liar and finds he has to lie all the time'.</p> <p>Judge found he was 'maintaining an inflated lifestyle ...' Was 'a deliberate, calculating and fundamentally dishonest person'.</p>	
21.	<p><i>Murphy v The State of Western Australia</i></p> <p>[2013] WASCA 178</p> <p>Delivered 12/08/2013</p>	<p>49 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior convictions.</p> <p>Completed Year 11 at school and worked in varying occupations, including working with children at rocky Bay Crippled Children's Association.</p> <p>Strong support from his first wife, his children from his first marriage and friends.</p>	<p>Ct 1: Indecent deal 13-16 yrs. Ct 2: Sex pen 13-16 yrs. Ct 3: Sex pen 13-16 yrs. Ct 4: Indecent deal 13-16 yrs. <i>Counts 1-4 each alleged that the victim was under the care, supervision or authority of the appellant.</i> Ct 6: Indecent deal u13 yrs. Ct 9: Attempt to pervert the course of justice.</p> <p>The two victims B and K were siblings in the foster care of the appellant and his then (second) wife. They resided with another sibling J together in the family home in Kelmscott along with his wife's daughter from a prior relationship.</p> <p><u>Ct 1:</u> In late 2008 the appellant's wife took her daughter to England for 3 weeks. Ct 1 took place in her absence. In the shed at the Kelmscott property the appellant cuddled and tongue-kissed B, then touched her bottom with his hands over her clothing.</p> <p><u>Ct 2-4:</u></p>	<p>Ct 1: 18 mths (conc). Ct 2: 3 yrs 6 mths imp. Ct 3: 3 yrs 6 mths imp (conc). Ct 4: 18 mths imp (conc). Ct 6: 18 mths imp (cum on Ct 2). Ct 9: 3 yrs imp (cum on Ct 6).</p> <p>TES 8 yrs imp.</p> <p>EFP.</p> <p>Shown no remorse or insight into his offending behaviour.</p> <p>Sentencing judge found that the offences were not isolated, but part of a continuing course of such conduct by the</p>	<p>Dismissed.</p> <p>At [30] The sentencing judge characterised the appellant's offending as a very serious instance of its type. Indeed it is ... The appellant targeted the same vulnerable child he had sexually abused, which was a further gross breach of the trust which had been reposed in him. The vulnerability of the complainants was heightened by the fact that they were foster children placed in the care of the appellant and his wife by DCP.</p> <p>At [34] I accept that the total sentence is close to the upper limit of the</p>

			<p>In 2009 B, aged 14, and J were helping the appellant renovate a house. The appellant pulled B's pants and underpants to her knees and inserted his finger into her vagina while masturbating himself. After sucking his finger and inserting it again into B's vagina several times, the appellant performed cunnilingus on B, only stopping when J returned. Later the same day the appellant put his hand inside B's bra and touched her nipple. The appellant told B that if she told anyone, she would be kicked out of the family home.</p> <p><u>Ct 6:</u> In 2010 K and B swapped beds, with the then 12 yr old K sleeping on the top bunk bed and B on the lower bunk. The appellant pulled down K's singlet and bra, removed her dressing gown and touched her breasts with his hands.</p> <p><u>Ct 9:</u> The appellant left the Kelmscott house after he was charged. In contravention of his bail conditions, the appellant continuously contacted family members. Between a period of just under 4 mths the appellant made 260 calls from his mobile to those of his wife and B. The appellant met with B and J on a number of occasions, phoned B multiple times each day, bought her gifts and asked her to drop the charges, telling her that bad things would happen to him in prison.</p>	<p>appellant.</p> <p>Also found that the appellant used the pretext of taking K to the toilet at night as an opportunity to sexually molest B.</p>	<p>sound discretionary range. However, apart from his prior good character, there is nothing in the appellant's favour by way of mitigation. Further, the sexual offences are representative and the circumstances of the offending as a whole are undoubtedly serious.</p>
20.	<p><i>Dudzik v The State of Western Australia</i> [2012] WASCA</p>	<p>Convicted after fast-track PG. Came to Australia in 2008 on 457 working visa.</p>	<p>1 x Attempt PCJ. Ct 1: Fraud. Ct 2: Fraud. Ct 3: Fraud.</p>	<p>2 yrs imp. Ct 1: 12 mths imp. Ct 2: 18 mths imp. Ct 3: 2 yrs imp.</p>	<p>Dismissed. At [24] When an attempt to PCJ involves deceit if a court, the gravity of the</p>

<p>195</p> <p>Delivered 8/10/2012</p>		<p>Ct 4: Fraud. Ct 5: Fraud.</p> <p><u>Pervert the course of justice</u> In the course of the sentencing proceedings for the fraud convictions below, the appellant prepared, signed and submitted three letters in the name of her daughter, a family friend and her mother without their knowledge or permission. The appellant also gave instructions to her counsel that her parents had died in a car crash when she was approx 12 mths old and that her two children were completely dependent on her. Counsel made oral submissions to that effect. The statements were false.</p> <p>Appellant also provided a letter from Rio Tinto for the purposes of n bail variation prior to sentencing to allow her to leave the country stating her attendance in the USA was crucial to testing the company was doing, that the appellant was a permanent employee of Rio Tinto and that Rio Tinto was aware of the criminal proceedings in relation to the counts of fraud and was prepared to allow her to continue working for them after the conclusion of the criminal matter. The author of that letter subsequently told the court he knew nothing of the criminal proceedings; was told by the appellant that there were issues with fraudulent invoices at Woodside but that she had done nothing wrong and that the matter had been resolved; was told by the appellant the letter was for visa purposes and he was unaware the letter would be used in criminal proceedings; that no one at Rio Tinto had guaranteed the appellant continued employment following the conclusion of the criminal</p>	<p>Ct 4: 2 yrs imp. Ct 5: 2 yrs imp.</p> <p>TES 4 yrs imp.</p> <p>EFP.</p>	<p>offending is increased.</p> <p>At [25] Sentence of 2 yrs imp for attempt PCJ in these circumstances is towards the lower end of the sound discretionary range.</p> <p>At [36] <i>“The tendering of false character references and other materials poses serious potential threats to the administration of justice. There is, in the particular case, a real prospect that a sentence will be mislead and impose a sentence that is unjust. Further, there is the potential to undermine the integrity of the sentencing proceedings generally. Finally, there is the prospect that character witnesses and experts might be required to attend court to attest to what they have written causing needless inconvenience and hampering of the ability of courts to dispose of sentencing cases in a timely way.”</i></p>
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			<p>proceedings; the appellant had told him she was undergoing treatment for cancer and she had been given time off work for that treatment.</p> <p><u>Fraud</u> Appellant employed as a contracts manager at Woodside assigned to a project in Karratha. Appellant falsely registered a co-worker's business (CDC) as a vendor contracted to Woodside so that invoices from that business could be paid directly to her.</p> <p>Appellant submitted a false invoice from CDC for an amount of \$5,280. The full amount was transferred by Woodside to the appellant's personal bank account (ct 1).</p> <p>Appellant submitted a false invoice from CDC and was paid \$19,360 by Woodside (ct 2).</p> <p>Appellant submitted a false invoice from CDC in the amount of \$84, 480 by Woodside (ct 3). On this occasion the invoice said the fees were for services rendered by her co-worker and the money was to be paid into an account held by CDC. Appellant then told that co-worker that she had been subcontracting to Woodside outside her normal duties and had included \$42,000 of her fees in the invoice. Appellant instructed her co-worker to transfer \$10,500 to her personal account and retain the rest to cover any additional tax liability and for assisting her.</p> <p>Appellant submitted a false invoice from CDC in the amount of \$54,560 by Woodside (ct 4). Again the invoice said the fees were for services rendered by her co-worker and the money was to be paid into an account held by CDC. Appellant again told that co-worker that she had been subcontracting to</p>		
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			<p>Woodside outside her normal duties and had included \$25,600 of her fees in the invoice. Appellant instructed her co-worker to transfer \$6,000 to her personal account and retain the rest to cover any additional tax liability and for assisting her.</p> <p>Appellant submitted a false invoice from CDC and was paid \$77,400 by Woodside (ct 5). Again the invoice said the fees were for services rendered by her co-worker and the money was to be paid into an account held by CDC. This time the co-worker, having become suspicious of the appellant, refused to transfer any money into her account and reported the activity to Woodside.</p> <p>Appellant repaid \$41, 540 to Woodside – the amount she personally received but total amount defrauded was \$241, 120.</p>		
19.	<p><i>Fazari v The State of Western Australia</i></p> <p>[2012] WASCA 176</p> <p>Delivered 31/08/2012</p>	<p>32 yrs at time offending. 33 yrs at time sentencing.</p> <p>Convicted after fast-track PG (PCJ, fail to stop and report).</p> <p>Convicted after trial (poss methyl wiss).</p> <p>Prior criminal record – traffic offences; poss cannabis wiss; poss amphetamine; poss smoking implement.</p> <p>Offending PCJ and fail to</p>	<p>1 x Attempt PCJ.</p> <p>1 x Fail to stop after being involved in incident occasioning GBH.</p> <p>1 x Fail to report incident occasioning GBH.</p> <p>1 x Poss methyl wiss 223g at 12%.</p> <p>Appellant drove a truck towards an intersection and turned in front of a bus. The bus swerved to avoid colliding with the appellant's truck but the rear of the bus collided with the front of the truck. The bus driver lost control and the bus flipped onto its side and collided with two trees. The appellant went to drive away as the bus crashed but was stopped by a witness. The appellant then fled the scene on foot. More than 20 school children were injured – 12 had to be hospitalised (GBH was a child who suffered</p>	<p>2 yrs imp. 2 yrs imp.</p> <p>18 mths imp. 4 yrs 4 mths imp.</p> <p>TES 8 yrs 4 mths imp.</p> <p>EFP.</p> <p>No remorse or empathy.</p>	<p>Allowed.</p> <p>Sentence for fail to stop reduced to 18 mths imp and fail to report reduced to 6 mths imp.</p> <p>TES reduced to 6 yrs 4 mths imp.</p> <p>At [85]-[100] Discussion of comparable cases for attempt PCJ.</p> <p>At [100] Attempt PCJ in present case was very</p>

		<p>stop and report breached bail for drug offence.</p> <p>Married with 3 children (10, 8 and 5 yrs of age).</p> <p>Ran his own plastering business; experiencing financial pressure at time offending.</p> <p>History of amphetamine abuse – stopped using at 21 yrs old but re-commenced at 28 yrs old as a coping mechanism for financial pressure; using on a daily basis for about 3 yrs before having a naltrexone implant.</p>	<p>serious spinal injuries and a ruptured kidney). The appellant asked one of his employees, Ty-Aaron Baker, to take the blame for the accident and he agreed.</p> <p>Police attended the appellant's home on the night of the crash and the appellant told them Baker had been driving the truck at the time of the collision. Police arrested Baker, who admitted driving at the time of the collision and fleeing the scene, and he was charged with several offences. Baker made four appearances in court in relation to those charges. Further police inquiries revealed the appellant was actually the driver and that his license was under suspension. Deception lasted approx 4 ½ mths.</p> <p>Appellant acted as a courier for two co-offenders in relation to the drug charge.</p>		<p>serious offence</p>
<p>18.</p>	<p><i>Dillon v The State of Western Australia</i></p> <p>[2010] WASCA 135</p> <p>Delivered 4/08/2010</p>	<p>36 yrs at time offending.</p> <p>Convicted after fast track PG.</p> <p>PCJ offence breached bail for drug offences.</p> <p>Prior criminal history – served 12 mths imp in 1998 for poss amphetamine wiss.</p> <p>Good work record; positive character references.</p>	<p>1 x Attempt PCJ.</p> <p>1 x Poss methyl wiss 75.7g at 11-13%.</p> <p>1 x Poss methyl wiss 59.44g at 11-12%.</p> <p>1 x Poss MDMA wiss 5.54g at 21%.</p> <p>5 x s 32 matters.</p> <p>Very serious instance of offending – motivation was to avoid conviction for serious drug offences.</p> <p>Premeditated and planned – not 'spur of the moment'.</p> <p>Appellant was stopped by police for speeding – drugs above were found in vehicle. Appellant was</p>	<p>2 yrs imp.</p> <p>4 yrs 6 mths imp.</p> <p>4 yrs 6 mths imp.</p> <p>1 yr imp.</p> <p>2 mths imp.</p> <p>TES 6 yrs 6 mths imp.</p> <p>Genuine remorse.</p>	<p>Dismissed.</p> <p>Correct to impose a wholly cumulative sentence as offending was not part of one transaction, but rather offending which was separated in nature and time from the drug offending, and was committed while appellant was on bail for those offences.</p>

			<p>charged and released on bail.</p> <p>In following weeks, appellant's telephone was intercepted by police and he was heard on numerous occasions discussing with other people a plan to get someone else to say drugs were not his. Appellant met with Mr Marchese and asked him to take blame for drugs in return for a vehicle valued at \$10,000. Mr Marchese agreed. Appellant arranged for him to attend appellant's solicitor's office and sign a statutory declaration in which Mr Marchese stated that he had hidden the drugs in appellant's vehicle and appellant knew nothing about them. Appellant took Mr Marchese to the Kalgoorlie Police Station and they presented statutory declaration to police and was interviewed. During interview, Marchese admitted the statutory declaration was false and that he had agreed to 'take the rap' after being approached by the appellant.</p>		
17.	<p><i>McAuley v The State of Western Australia</i></p> <p>[2010] WASCA 98</p> <p>Delivered 25/05/2010</p>	<p>35 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record – drugs; traffic offences; previously misled police in relation to driving offence (convicted and fined).</p> <p>Single; 3 children who he had not seen since his marriage breakdown 5 yrs earlier.</p> <p>Unemployed; seriously</p>	<p>1 x Attempt PCJ.</p> <p>Appellant repeatedly made false statements to police resulting in an innocent 19-year-old being charged with stealing and appearing before the court on 3 separate occasions</p> <p>After an evening of drinking, 2 friends of appellant agreed to go to a building site to steal fuel. All 3 drove to building site - appellant had fallen asleep in the back of the car earlier, awoke for a short time but was not aware of their plans. Building site was under surveillance by police who approached the car. Appellant stayed in vehicle and one of the offenders fled the scene. Police saw a wallet on the car dashboard with victim's driver's licence in it</p>	<p>12 mths imp.</p> <p>TES 12 mths imp.</p> <p>EFP.</p> <p>Remorse.</p> <p>General deterrence and specific deterrence important factors especially as appellant had previously deceived police.</p>	Dismissed – leave to appeal refused on papers.

		<p>injured in 2008 and career as jockey ended.</p> <p>Alcohol abuse at time offending.</p>	<p>and commenced a search for him. The other offender was apprehended and identified the victim as the offender who ran off. Officer showed appellant the driver's licence and appellant said victim was the other offender and drove the car. Appellant later provided a witness statement implicating the victim as the driver and provided a physical description of him.</p> <p>Victim was interviewed by police, denied involvement but was arrested, charged and bailed. Victim was required to appear in court three times before charge was discontinued as result of an alibi. Police then interviewed appellant who said he had been contacted by victim's father and now felt guilty about falsely implicating the victim. Appellant made a statement as to the true identity of the other offender.</p>		
<p>16.</p>	<p><i>Penny v The State of Western Australia</i></p> <p>[2010] WASCA 65</p> <p>Delivered 8/04/2010</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after fast track PG.</p> <p>Extensive prior criminal record - principally traffic offences; dishonesty; stealing; fraud.</p> <p>Difficult upbringing.</p>	<p>1 x Attempt PCJ.</p> <p>2 x s 32 offences(driving while disqualified and stealing).</p> <p>Appellant disqualified driving for life in 2001. Arrested in 2009 on driving and stealing charges and gave her sister's name and date of birth to police. Appellant taken to police station and maintained the false name, despite being challenged by police. Appellant subsequently charged in the false name and signed a bail undertaking in the false name.</p> <p>On the day appellant due to appear in Magistrate's Court on those charges, she rang the court using the false name and stated she was unable to attend the court. A bench warrant was issued.</p>	<p>9 mths imp.</p> <p>6 mths imp each ct.</p> <p>TES 21 mths imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>TES reduced 15 mths.</p> <p>EFP after 7 ½ mths imp.</p> <p>Sentencing judge failed to take into account term imp serving when sentenced.</p> <p>Individual sentences not disturbed.</p>

			The investigating police officer later ascertained that the appellant had used a false name, informed the court and the stealing charge in her sister's name was dismissed.		
<i>Transitional Provisions Repealed (14/01/2009)</i>					
15.	<i>Gilmour v State of Western Australia</i> [2008] WASCA 42 Delivered 27/02/08	Convicted after trial. No prior criminal record - conviction for breach VRO in ACT disputed and accorded no weight in sentencing. No material suggesting exceptionally good character.	1 x Attempt PCJ. 1 x Agg stalking. More serious offending than the giving of a false name to police or entering into a false recognisance - involved a deliberate attempt to persuade innocent and unconnected third parties to engage in criminal conduct. Appellant and victim divorced approx 12 mths – appellant began to stalk victim. Offending conduct had a period of 3 ½ mths, ceasing only when appellant taken into custody. Conduct escalated over time, culminating in the appellant going to victim's house wearing a gorilla mask and carrying a knife. Appellant requested his neighbours to provide him with an alibi for the previous evening (the night of the "gorilla mask" event). Alibi was to have been to the effect that he was at a barbecue at their house, which was effectively the story which appellant told police in interview. Neighbours did tell police a false story when first asked about the matter. However, once they realised that police considered that story to be false, they revealed the true position and appellant's role in requesting that the false story	10 mths imp. 4 yrs imp. TES 4 yrs 10 mths imp. Flagrant disregard for law and escalating misconduct towards victim suggested very strong need for personal deterrence.	Dismissed – 10 mths PCJ lenient.

			be told.		
14.	<p><i>Billing v The State of Western Australia and Billing v The State of Western Australia [No 2]</i></p> <p>[2007] WASCA 145 Delivered 13/07/07</p> <p>[2008] WASCA 11 Delivered 21/01/2008</p>	<p>35 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Minor prior criminal record – ‘nuisance’ offences.</p>	<p>1 x Conspire PCJ. 1 x Conspire commit arson.</p> <p>Appellant and two co-offenders conspired to commit a series of fire bomb attacks on Chinese restaurants. Attacks racially motivated - appellant and co-offenders were members of the Australian Nationalist Movement. Appellant charged and bailed on conspiracy to commit arson charges. While on bail, appellant absconded and once apprehended, had been remanded in custody. While in custody, appellant involved in planning the bashing of prosecution witnesses so as to prevent them testifying.</p>	<p>18 mths imp. 3 yrs imp.</p> <p>TES 4 yrs 6 mths imp. EFP.</p>	Dismissed.
13.	<p><i>Norton v State of Western Australia</i></p> <p>[2007] WASCA 75 Delivered 10/04/07</p>	<p>25 yrs old at time offending.</p> <p>Convicted after fast track PG. Cooperated with the authorities.</p> <p>No prior criminal record.</p> <p>Single mother of a young child.</p> <p>Motivated by financial pressure.</p>	<p>1 x Attempt PCJ. 1 x Fraud.</p> <p>Appellant was approached by juvenile co-accused in her front yard and they discussed difficulties appellant was having selling her car. Juvenile co-offender told appellant he knew someone who could take the car and burn it so she could claim it on insurance - appellant agreed. Within a few days, juvenile co-offender returned with co-offender and appellant gave them her spare key and immobiliser. Two co-offenders drove around the suburban area at excessive speeds in a reckless manner. Juvenile co-offender was dropped off and other co-offender was later involved in a police pursuit in the car - apprehended he crashed into a garden bed and a</p>	<p>18 mths imp. 18 mths imp.</p> <p>TES 18 mths imp.</p> <p>EFP.</p> <p>Remorse; low likelihood re-offending.</p>	<p>Allowed.</p> <p>Sentence for fraud reduced to 12 mths imp.</p> <p>TES unaffected.</p> <p>EFP.</p> <p>Appellant engaged in deliberate scheme with two other people to deceive and defraud an insurance company. Offence was not committed immediately after adoption of the</p>

			<p>police car, damaging the appellant's car. Appellant telephoned police and reported that car had been stolen. Next day appellant telephoned insurance company and told them the car had been stolen and had been involved in a police pursuit during which it had been crashed. Total cost for hire car, towing and investigation was \$4934.48. Police interviewed appellant and obtained a written statement. Appellant maintained the car had been stolen and that she had no knowledge of who stole it or how it was stolen. She said she may have left her keys in the ignition.</p> <p>Co-offender who crashed car was charged with stealing and made several appearances in court before it was listed for trial. 17 mths after incident, co-offender admitted truth to police. Appellant was interviewed further and admitted the false statement she made to police.</p> <p>Appellant not the instigator of offence but readily agreed to it.</p>		<p>scheme (or on the "spur of the moment") – there was time for appellant to have reflected upon the gravity of the proposed course of conduct before it was implemented.</p> <p>Contains a good summary of relevant principles and of comparative cases.</p>
12.	<p>Ranford v State of Western Australia [No 2]</p> <p>[2006] WASCA 243; 166 A Crim R 451</p> <p>Delivered 3/07/06</p> <p>Two co-accused, Ranford and Bassan</p>	<p><u>Ranford:</u> 37 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Extensive prior traffic record- driving without a license; breach of extraordinary driver's license; driving an unlicensed vehicle; driving vehicle altered/fraudulent plates.</p>	<p>1 x Attempt PCJ.</p> <p>Serious instance of attempting to PCJ.</p> <p>Period of the deception was brief but only because it was detected in the early stages.</p> <p>Premeditated and deliberate.</p> <p>Ranford received two speeding tickets – possibility extraordinary driver's license would be affected. Ranford asked Bassan to accept responsibility for fine and demerit points. Ranford said he would pay</p>	<p>15 mths imp each offender.</p> <p>EFP.</p>	<p>Allowed.</p> <p><u>Sentences on appeal:</u> Bassan: 6 mths imp susp 12 mths</p> <p>Ranford: 8 mths imp.</p> <p>At [11]-[35] discussion comparable cases.</p> <p>At [12] offence of PCJ can take many forms and can</p>

		<p>Under financial pressure; possibility losing business if extraordinary license revoked.</p> <p><u>Bassan:</u> 31 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>No relevant prior criminal record.</p> <p>Motivated by desire to help friend; did not appreciate seriousness of offending.</p>	<p>the fine and give Bassan \$1000. Bassan agree. Bassan later provided Ranford with his driver's licence details so that Ranford could write a letter stating that Bassan was the driver. Ranford never sent the letter and paid the first fine himself. Bassan then signed a statutory declaration that he was the driver in relation to the second fine and Ranford gave it to police. Bassan never received the \$1,000 promised by Ranford.</p>	<p>come at any point in the administration of justice but offence is always a serious one.</p> <p>At [36] ordinarily only term imp is appropriate for case involving giving a false name to avoid consequences of traffic offence – range of imp usually 4-11 mths.</p> <p>At [36] when assessing seriousness PCJ offence, look at nature and seriousness consequences sought to be avoided; period time deception ran for, whether persisted or repeated and what was done to maintain it; whether accomplices or victims involved; presence violence or threats; diversion of investigative, police & court resources caused; degree planning and premeditation; whether court deceived or extent or consequences of any false public records created.</p> <p>At [53] offending too serious for anything other</p>
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					than a term of imp.
11.	<i>Librizzi v State of Western Australia</i> [2006] WASCA 237; 33 WAR 104; 167 A Crim R 26 Delivered 13/11/06	65 yrs a time sentencing. Convicted after trial. No prior criminal record. Taxi driver; good employment history. Married; 2 adult children.	1 x Attempt PCJ s 143 <i>Criminal Code</i> . Extremely serious attempt PCJ – aggravated by an attempt to interfere with a witness and by the planning and premeditation involved. Appellant was charged in 2001 with indecent assault. Mrs W, an elderly woman, made a statement to police that she was an eyewitness to the assault. In 2003, appellant phoned Mrs W's son. The next day, appellant went to the Whittle's home and spoke to the Whittles for approx 30 min. Appellant showed them a copy of Mrs Whittle's statement and told them it was false - Mrs Whittle could not have seen him even if he had no clothes on; that he and the victim were only talking; that Mrs Whittle had been pressured into giving a false statement by victim's mother; that he was innocent; that when he was proven innocent he would be taking people to court and seizing assets; that it was a serious matter to give a false statement and false evidence and Mrs Whittle could go to gaol for five to seven years for it; that he did not want to get her into trouble and was trying to help her; and that he wanted her to withdraw her statement. Appellant's motivation was his belief that he had been wrongly charged – not a mitigating factor in sentencing.	15 mths imp. EFP. No remorse.	Dismissed.
10.	<i>Cummins v State of Western Australia</i>	21 yrs at time sentencing. Convicted after PG.	1 x Attempt PCJ s 143 <i>Criminal Code</i> . 1 x Attempt to procure another to commit criminal damage.	32 mths imp. 32 mths imp.	Dismissed.

	<p>[2006] WASCA 201</p> <p>Delivered 29/09/06</p>	<p>Prior criminal record - agg armed robbery of a taxi driver; drive stolen vehicle recklessly; steal motor vehicle.</p>	<p>Serious instance of offending persisted in over several days.</p> <p>Appellant was prisoner at Hakea Remand Centre and made numerous telephone calls to his girlfriend using prison telephone system. All calls made by inmates are monitored - warning precedes each call so caller and recipient aware. 12 individual calls were identified in which appellant attempted to procure a juvenile to go to an address and damage vehicles parked there. Occupants of premises were witnesses in a trial involving appellant. Appellant stated in calls his motive was to stop witnesses attending court and to get charges dropped. Appellant said he wanted the cars damaged by pouring brake fluid on them and setting them alight. Appellant offered the juvenile drugs as payment and encouraged his girlfriend to do whatever she could to help the juvenile. The acts were never performed and neither the girlfriend nor the juvenile entered into any agreement to commit the offences.</p>	<p>TES 4 yrs 6 mths (sentences above concurrent with each other but cumulative on term imp serving at time sentenced).</p> <p>EFP.</p>	
9.	<p>"S" v The Queen</p> <p>[2003] WASCA 309</p> <p>Delivered 10/12/03</p>	<p>Convicted after trial.</p> <p>Minor prior criminal record.</p> <p>3 children - M (son of W and appellant); daughter; A (son of appellant and co-accused and a severely disadvantaged child)</p>	<p>1 x attempt PCJ s 143 <i>Criminal Code</i>.</p> <p>Offending one of the most serious instances of attempt PCJ – premeditated and irrevocably tainted police investigation into allegations of sexual abuse.</p> <p>W had attempted suicide in a country town and was found by M (7 yr old son of appellant and W). W had custody of M after long and bitter Family Court dispute. W was taken to hospital, transferred to</p>	<p>2 yrs imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>TES 2 yrs susp 2 yrs.</p> <p>Impact of imp on A was not given appropriate weight in sentencing – amounted to exceptional hardship.</p>

		Expert testimony to the effect that a disruption to A's care caused by the imp of either or both parents would be incredibly detrimental and put A back to a level from which he would likely not recover.	Perth. M placed in care of social worker and the social worker packed various items for M, including W's mobile telephone. M was returned to care of appellant and her partner (co-accused). Appellant took M to Child Protection Unit at Princess Margaret Hospital following statements M made to appellant about alleged sexual abuse. The next day the appellant used W's mobile telephone to send text messages to a number of people. Texts read "I can't handle life. I can't forgive myself for having sex with my own son, [M]." Police were called in to investigate and it was shown messages were sent from an area W was not in and the appellant's involvement in them was subsequently discovered. Co-offender given susp term at first instance due to impact on A.		
Transitional Provisions Enacted (31/08/2003)					
8.	<i>Rauhina v The Queen</i> [2002] WASCA 91 Delivered 23/04/02	30 yrs at time sentencing. Convicted after trial (PCJ, burglary, steal motor vehicle). Convicted after PG (AOBH). Prior criminal record - breach VRO; assault. Hardworking family man.	1 x Attempt PCJ. 1 x AOBH. 1 x Burglary. 1 x Steal motor vehicle. More serious example of PCJ. Appellant's car was damaged in a car park. Appellant believed victim caused damage and went to victim's home with his nephew (17 yrs). Appellant kicked in door, demanded victim come out, and then punched victim in the head. After being punched a number of times victim agreed he	3 yrs imp. 9 mths imp. 3 yrs imp. 3 yrs imp. TES 6 yrs imp. Equivalent to 4 yrs imp after implementation of transitional provisions. EFP. No remorse.	Dismissed – severe but not excessive or crushing. T [15] PCJ ' <i>strikes at the heart of the justice system</i> ' and general deterrence dominant sentencing consideration. At [16] offences PCJ involve giving false name to police not unusually receive 12-18 mths imp

			<p>had damaged the car. Appellant demanded victim give him his car whilst appellant's was being repaired. Victim agreed as a result of the threats and beating and went into the house to get the keys. Appellant kicked a mirror in the bedroom and continued to assault victim.</p> <p>Once appellant obtained the keys he left, telling victim that if he contacted police he would kill him. Victim reported incident to police and appellant charged. Three subsequent phone calls between appellant and victim in which appellant threatened victim with violence if he did not withdraw the charges (approx 2 weeks after charges laid).</p>		and more serious instances with higher sentences.
7.	<p>R v Swain</p> <p>[1999] WASCA 22</p> <p>Delivered 19/05/1999</p>	<p>Convicted after PG.</p> <p>Prior criminal record – traffic offences only.</p> <p>Good employment history; excellent references.</p> <p>Originally disqualified from driving for drink driving offences; following traffic accident in 1990, respondent stopped drinking.</p>	<p>1 x Attempt PCJ.</p> <p>Offending period approx 5 ½ yrs - made offending particularly serious.</p> <p>Respondent disqualified from driving for life in 1990. In 1993 respondent obtained a driver's license belonging to someone else without their knowledge.</p> <p>On 3 occasions (twice in 1993 and once in 1995) respondent used that driver's license to transfer vehicles into a false name, signing the transfer papers in that false name. Respondent also renewed that driver's license each year it fell due and completed a change of address form in that name. Respondent stopped by police several times and used the false name and supported it by producing the driver's license. Respondent incurred several traffic fines in that name, paying them all.</p> <p>Respondent stopped by police in Jan 1997 riding an unlicensed motorbike. Respondent used driver's</p>	<p>18 mths imp.</p> <p>TES 18 mths imp susp 2 yrs.</p>	<p>Allowed.</p> <p>TES 15 mths immediate imp substituted.</p> <p>EFP.</p> <p><i>At [19] 'The seriousness of the offence arises from the fact that life suspensions are imposed when the law recognises that it is to dangerous to the public to allow the relevant drivers to drive motor vehicles on a public road. Serious questions of public safety are involved in these decisions....the respondent did not only drive once. He continued to drive and to</i></p>

			<p>license in false name and was summonsed. Respondent endorsed and signed summons and returned it to the court with a letter written and signed in that false name. Respondent was convicted and fined in false name. Respondent later paid the fine.</p> <p>In June 1997, respondent convicted failing to give way, driver on suspended license and creating a disturbance. When arrested for these offences, respondent gave his correct name. During police interview, respondent admitted to using the driver's license in a false name.</p>		<p><i>commit new offences. He then tried to cover it up by misleading the justice system.'</i></p> <p>NB: double jeopardy applied to State appeals.</p>
6.	<p>Wright v R</p> <p>Supreme Court Library No 920531</p> <p>Delivered 20/08/1992</p>	<p>Convicted after early PG.</p> <p>Prior criminal record – traffic offences; stealing; not served term imp previously.</p> <p>3 children (only 1 in her care at the time of sentencing); separated from 2nd husband; began drinking and taking drugs after separation 3 yrs earlier.</p>	<p>Ct 1: Attempt PCJ. Ct 2: Attempt PCJ.</p> <p><u>Ct 1:</u> Appellant arrested for shoplifting. Gave store security officers a false name and produced stolen identification in support of that falsehood. Appellant signed photos of stolen items in false name and later summonsed by police in that false name. Appellant attended court, PG to stealing charge and was fined and ordered to do community service under that false name.</p> <p><u>Ct 2:</u> Approx 3 weeks later, appellant stopped by police for speeding and gave a false name. Traffic infringement was issued in that false name as well as a vehicle examination notice. Later stated to police she had used a false name as she had a prior record and did not hold a valid driver's license.</p>	<p>12 mths imp. 6 mths imp.</p> <p>TES 18 mths imp. Equivalent to 12 mths imp after implementation of transitional provisions..</p>	<p>Allowed.</p> <p>TES reduced to 12 mths imp.</p> <p>NB: individual terms not altered only TES.</p>
5.	<p>Jeffery v R</p>	<p>30 yrs at time sentencing.</p>	<p>1 x Attempt PCJ.</p>	<p>18 mths imp.</p>	<p>Allowed.</p>

	<p>Supreme Court No 920357</p> <p>Delivered 3/06/1992</p>	<p>Convicted after PG at first opportunity.</p> <p>Prior criminal record – traffic offences; 2 previous driving under the influence convictions; 2 previous convictions for giving a false name; agg assault police; assault; life time disqualification from driving.</p> <p>Good work history; married.</p>	<p>Appellant was stopped due to erratic driving and taken to police station. Appellant refused breath test and was arrested. From time he was stopped through to his release on bail, appellant used a false name. Appellant failed to appear and a bench warrant was issued in that false name.</p> <p>Convicted 2 yrs 3 mths after offending.</p>	<p>TES 18 mths imp. Equivalent to 12 mths imp after implementation of transitional provisions.</p>	<p>TES reduced to 12 mths imp.</p>
4.	<p>Toase v The Queen</p> <p>Supreme Court Library No BC9201238</p> <p>Delivered 9/04/1992</p>	<p>29 yrs at time appeal.</p> <p>Convicted after late PG (after listed for trial).</p> <p>Extensive prior criminal record – breaking and entering; stealing; receiving; extensive traffic offences; mislead police; impersonates police officer;</p> <p>Care of 6 yr old son; employed.</p>	<p>Cts 1 & 3: Attempt PCJ.</p> <p>Cts 2 & 4: Make false recognisance.</p> <p><u>Cts 1 & 2:</u> Appellant stopped while driving and breathalysed by police – BAC in excess 0.08. When asked what his name was, appellant gave false name. Subsequently charged and bailed on his own recognisance in that false name. Appellant failed to appear in court and a bench warrant, in the false name, was issued. 7 mths elapsed before appellant was apprehended. Subsequently, received 18 mths imp for those offences (charged in own name).</p> <p><u>Cts 3 & 4:</u> Approx 6 weeks after being stopped in the circumstances above, the appellant was again stopped and breathalysed by police. Appellant was again charged with driving under the influence and</p>	<p>Ct 1: 15 mths imp. Ct 3: 18 mths imp. Ct 2: 9 mths imp. Ct 4: 9 mths imp.</p> <p>TES 33 mths imp. Equivalent to 22 mths imp after implementation of transitional provisions..</p> <p>EFP.</p>	<p>Dismissed.</p>

			<p>having no driver's license under a false name and bailed on his own recognisance in that false name. Appellant used a different false name to that used above. Appellant subsequently appeared in court and entered a PG in that false name and was sentenced as a first time offender, which he patently was not.</p> <p>Second instance offending more serious than first as court was deceived.</p>		
3.	<p>Goulding v R</p> <p>Supreme Court Library No 9082; (1991) 56 A Crim R 75</p> <p>Delivered 2/10/1991</p>	<p>25 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Prior criminal record – stealing.</p> <p>Engaged to co-offender.</p>	<p>1 x Conspire PCJ.</p> <p>Course offending prolonged, planned and persisted in.</p> <p>In May 1990, appellant was a passenger in a car driven by the co-offender when he had an accident with another car. Co-offender was disqualified from driving for life. Co-offender spoke with driver of the other car and promised to pay to fix the damage to her car if she did not report the matter to the police. Other driver subsequently reported the accident to police and identified the co-offender as the driver of the car. Other driver told co-offender she had reported the accident.</p> <p>In June 1990, co-offender was contacted by police on the phone and admitted he was the driver. Co-offender was advised that he could be charged.</p> <p>In September 1990, having heard nothing more from the police, appellant and co-offender discussed appellant making a statement to police that she was the driver and fabricated a story explaining how the other driver mis-identified co-offender as the driver. Appellant attended police</p>	<p>12 mths imp.</p> <p>TES 12 mths imp. Equivalent to 9 mths imp after implementation of transitional provisions.</p> <p>EFP.</p> <p>Genuine remorse; co-operated with police once deception admitted by co-offender.</p>	<p>Dismissed.</p> <p>p 77 offence of PCJ undermines justice system and requires deterrent penalty.</p> <p>p 78 this type of offending generally attracts custodial term owing to its inherent seriousness.</p>

			<p>station and reported accident, stating she was the driver and giving a false explanation as to how the co-offender was identified and why he stated he was the driver when first contacted by police. In January 1991, co-offender was interviewed and admitted the deception.</p>		
2.	<p><i>The Queen v Hunter</i></p> <p>Supreme Court Library No BC8990</p> <p>Delivered 7/08/1991</p>	<p>24 yrs at time appeal.</p> <p>Convicted after PG at first opportunity.</p> <p>Prior criminal record – reckless driving; fail to stop after accident; fail to report accident; 2 previous convictions giving false name to police; stealing.</p>	<p>1 x Conspire PCJ.</p> <p>The respondent was involved in a traffic accident and identified himself to the driver of the other car using the name of a friend. Respondent told friend what had happened and explained that he had done so as his driver's license was currently cancelled - a life disqualification on driving having been imposed on the respondent in 1986. Respondent and friend agreed that friend would say he was driving at the time of the accident following inquiries from the insurance company. Approx 3 weeks later, respondent interviewed by police and told them he was not the driver of the car, identifying his friend as the driver. Respondent later admitted the deception to police after friend decided he would not go through with the plan.</p> <p>Deception allowed respondent to avoid prosecution for 18 mths.</p>	\$500 fine.	<p>Allowed.</p> <p>6 mths imp substituted.</p> <p><i>At 8 ‘...the offences of attempting to pervert the course of justice, or conspiring to pervert the course of justice, are offences which are sufficiently serious, in that they strike at the heart of the administration of justice, as not to be offences which are ordinarily disposed of by the exercise of a non-custodial option such as a payment of a small fine.’</i></p> <p>Noted at 4 in discussing seriousness offence and comparative cases that the penalty under s 135 <i>Criminal Code</i> (conspire PCJ) is same as under s 143 <i>Criminal Code</i> (attempt PCJ).</p>

					NB: Double jeopardy applied to State appeals.
1.	<p><i>Higgins v the Queen; Bejawn v The Queen</i></p> <p>Supreme Court Library No BC9001208</p> <p>Delivered 25/07/1990</p>	Both 19 yrs at time appeal.	<p>1 x Attempt PCJ.</p> <p>Higgins was driving a car with Bejawn and three other passengers (one co-offender) when it was stopped by the police. Higgins gave police a false name (name of a friend of his brother). Vehicle was searched and 285g cannabis was found in the boot. The cannabis had been stolen by Higgins and Bejawn with the intent of selling it in Queensland when they arrived there. However, the co-offender stated cannabis was his and gave police a false name. Higgins instructed to drive car to police station and others taken to station in police car. At station, Higgins placed in a cell with Bejawn and co-offender. Bejawn told Higgins cannabis was his and that co-offender was going to use a false name and claim ownership. Bejawn told Higgins that this had been agreed to by everyone while they were in the back of the police car and that everyone was going to tell the same story.</p> <p>Higgins gave a statement implicating the co-offender under a false name as the owner of the cannabis using the false name he had earlier identified himself by to police. Co-offender was subsequently charged and convicted of poss cannabis wiss under the false name.</p> <p>Higgins again interviewed by police and eventually admitted his role in the deception – admitting that he had been told by the co-offender prior to being pulled over by the police, that if the car was stopped, the co-offender intended to give a false</p>	<p>17 mths imp each offender.</p> <p>Equivalent to approx 11 mths imp p after implementation of transitional provisions.</p>	<p>Dismissed.</p> <p>At [9] max penalty increased from 2 yrs imp to 7 yrs imp in 1987 to reflect seriousness of the offence.</p> <p>At [9] offending ranked as middle to top of the range of seriousness. Non custodial sentence not appropriate in circumstances but length imp imposed mitigated by youth.</p> <p>At [10] youth does not detract from the fact that PCJ is an offence that strikes at the heart of the justice system and calls for condign punishment.</p> <p>At [11] purpose was to hinder detection and prosecution of drug offences – aggravates conduct and increases its objective seriousness.</p>

			name to police. Higgins told police his motivation was protecting Bejawn, as the owner of the cannabis, from prosecution. Higgins did not admit that he and Bejawn had stolen the cannabis until confronted by Bejawn's version of events.		
<i>Maximum penalty for attempt PCJ increased from 2 yrs to 7 yrs imp (16/12/1987)</i>					

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